

MEMORANDUM

State of Alaska
Department of Law

To: The Honorable Loren Leman
Lieutenant Governor

From: Michael A. Barnhill *MB*
Assistant Attorney General
Labor and State Affairs – Juneau

Date: October 12, 2005

File No.: 663-06-0050

Tel. No.: 465-3600

Re: Review of Aerial Shooting
Initiative Petition Application

I. INTRODUCTION AND SUMMARY

You have asked us to review an application for an initiative petition entitled “An Act Prohibiting the Shooting of Wolves & Grizzly Bears with the Use of Aircraft.” We have completed our review and find that the application complies with the constitutional and statutory provisions governing the use of the initiative. Under these circumstances we recommend that you certify the application.

II. SUMMARY OF THE PROPOSED BILL AND ANALYSIS

A. Summary

The bill is comprised of one section. The bill seeks to amend AS 16.05.783 to make certain changes. The specific changes it seeks to make are not obvious because the bill is set forth in the format typically used for repealing and reenacting a statute. By comparing the bill to existing statute, we can see the changes it proposes.

First, the bill adds grizzly bears to the list of animals that may not be shot on the same day a shooter is airborne.

Second, the bill changes the nature of the existing predator control program as follows:

- (1) it limits the program to wolves and grizzly bears;

- (2) it requires the Commissioner of the Department of Fish and Game to make written findings based on adequate data that a "biological emergency" exists and that there is no feasible solution other than airborne control to prevent the biological emergency. "Biological emergency" is defined to mean where a wolf or grizzly bear population in a specific area is depleting a prey population to such point that if not corrected will cause an irreversible decline in the prey population that it is not likely to recover without implementing wolf or grizzly bear control;
- (3) participation in the predator program is limited only to employees of the Department of Fish and Game;
- (4) the predator program must be limited to the specific area where the biological emergency exists;
- (5) the predator program can only remove the minimum number of wolves or grizzly bears necessary to eliminate the biological emergency; and
- (6) other than as set forth above, the bill repeals the Board of Game's powers relating to predator control programs that are currently set forth in AS 16.05.783.

Third, the bill eliminates the exception that permitted an employee of the Department of Fish and Game to shoot a wolf, wolverine, fox or lynx on the same day the employee was airborne if done as part of a game management program. The bill also deletes the definition of game management program.

B. Analysis

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either "certify it or notify the initiative committee of the grounds for denial." The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080. We discuss these next.

1. The form of the proposed bill

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in

the title; (3) the enacting clause state, "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects – dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation – are listed in AS 15.45.010 and in art. XI, sec. 7, of the Alaska Constitution.

The bill is confined to one subject: the prohibition against same day aerial shooting. The subject of the bill is expressed in the title. The enacting clause is set out correctly.

The bill does not include any of the prohibited subjects. We do note, however, that in past cases questions have been raised regarding the extent to which the initiative may be used to allocate natural resources. *See, e.g., Pullen v. Ulmer*, 923 P.2d 54, 61-64 (Alaska 1996). In *Brooks v. Wright*, 971 P.2d 1025 (Alaska 1999), the Alaska Supreme Court ruled that the legislature does not have exclusive lawmaking power on matters relating to natural resource management, and that such issues may be the subject of an initiative. Following *Brooks*, we believe the subject matter of this initiative is not subject to exclusive legislative power. Accordingly, the bill is in the required form.

2. The form of the application

The form of an initiative application is prescribed in AS 15.45.030, which provides:

The application shall include (1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters.

The application meets the first three requirements. With respect to the fourth requirement, the Division of Elections within your office determines whether the application contains the signatures and addresses of not less than 100 qualified voters.

3. Number of qualified sponsors

The Division of Elections within your office will determine whether there are a sufficient number of qualified sponsors.

III. PROPOSED BALLOT AND PETITION SUMMARY

We have prepared the following ballot-ready petition summary and title for your consideration:

BILL AMENDING AERIAL SHOOTING LAW

This bill amends current law banning same-day aerial shooting to include grizzly bears. The bill permits the board of game to allow a predator program for wolves and grizzly bears if the Commissioner of Fish and Game finds an emergency, where wolves or grizzly bears in an area are causing a decline in prey. Only employees of the Department of Fish and Game could take part in the program. Only the minimum number of wolves or grizzly bears needed to stop the emergency could be removed.

Should this initiative become law?

This summary has a Flesch test score of 54.1, which approximates the target readability score of 60. We believe that the summary meets the readability standards of AS 15.60.005.

IV. CONCLUSION

Assuming that the Division of Elections determines that there are a sufficient number of qualified subscribers, we conclude that this bill and application are in the proper form, and that the application complies with the constitutional and statutory provisions governing the use of the initiative. Therefore, we recommend that you certify this initiative application, and so notify the initiative committee. Preparation of the petitions may then commence in accordance with AS 15.45.090.

Please contact me if we can be of further assistance to you on this matter.

MAB/ccg

cc: Laura Glaiser, Director of Division of Elections